

## OFFICE OF SPECIAL MASTERS

(Filed: February 6, 2007)

DO NOT PUBLISH

|                               |   |                                   |
|-------------------------------|---|-----------------------------------|
| MICHAEL and EILEEN SHANKS,    | ) |                                   |
| as parents of their daughter, | ) |                                   |
| JENNIFER LYNN SHANKS,         | ) |                                   |
|                               | ) |                                   |
| Petitioners,                  | ) |                                   |
|                               | ) |                                   |
| v.                            | ) | No. 06-0385V                      |
|                               | ) | Attorneys' Fees; Attorneys' Costs |
| SECRETARY OF                  | ) |                                   |
| HEALTH AND HUMAN SERVICES,    | ) |                                   |
|                               | ) |                                   |
| Respondent.                   | ) |                                   |

### DECISION ON ATTORNEYS' FEES AND ATTORNEYS' COSTS<sup>1</sup>

Petitioners, Michael Shanks and Eileen Shanks (Mr. Shanks and Mrs. Shanks or the Shanks), seek an award of \$15,386.03 in attorneys' fees and attorneys' costs for an action that they pursued under the National Vaccine Injury Compensation Program (Program).<sup>2</sup> *See* Joint Status Report (JSR), filed February 2, 2007. The Shanks represent that they did not incur any personal expenses as defined by General Order No. 9. *See* JSR. Respondent does not object. *See* JSR.

The Shanks did not receive Program compensation. Nevertheless, the statute enacting the Program accords discretion to the special master to "award an amount of compensation to cover" the

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<sup>1</sup> As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire decision" will be available to the public. *Id.*

<sup>2</sup> The statutory provisions governing the Vaccine Program are found in 42 U.S.C. §§ 300aa-10 *et seq.* For convenience, further reference will be to the relevant section of 42 U.S.C.

Shanks' "reasonable attorneys' fees and other costs" as long as "the special master or court determines that" the Shanks possessed "a reasonable basis for the claim" and that the Shanks filed the petition "in good faith." § 300aa-15(e)(1); *see, e.g., Di Roma v. Secretary of HHS*, 1993 WL 496981 (Fed. Cl. Spec. Mstr. Nov. 18, 1993). As the United States Supreme Court has cautioned in cases involving other fee-shifting schemes, the special master's "discretion is not without limit." *Blanchard v. Bergeron*, 489 U.S. 87, 89 n.1 (1989). Thus, absent "special circumstances," the special master "should ordinarily" award attorneys' fees and costs to an unsuccessful petitioner. *Id.*, citing *Newman v. Piggie Park Enterprises*, 390 U.S. 400, 402 (1968); *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983).

The special master has considered carefully the Shanks' request. The special master determines that the Shanks' request is appropriate. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment in the Shanks' favor for \$15,386.03. The judgment shall provide that the Shanks' attorney of record, Mark L. Krueger, Esq. (Mr. Krueger), may collect \$15,386.03 from the Shanks. Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review.

The clerk of court shall send the Shanks' copy of this decision to the Shanks by overnight express delivery.

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John F. Edwards  
Special Master